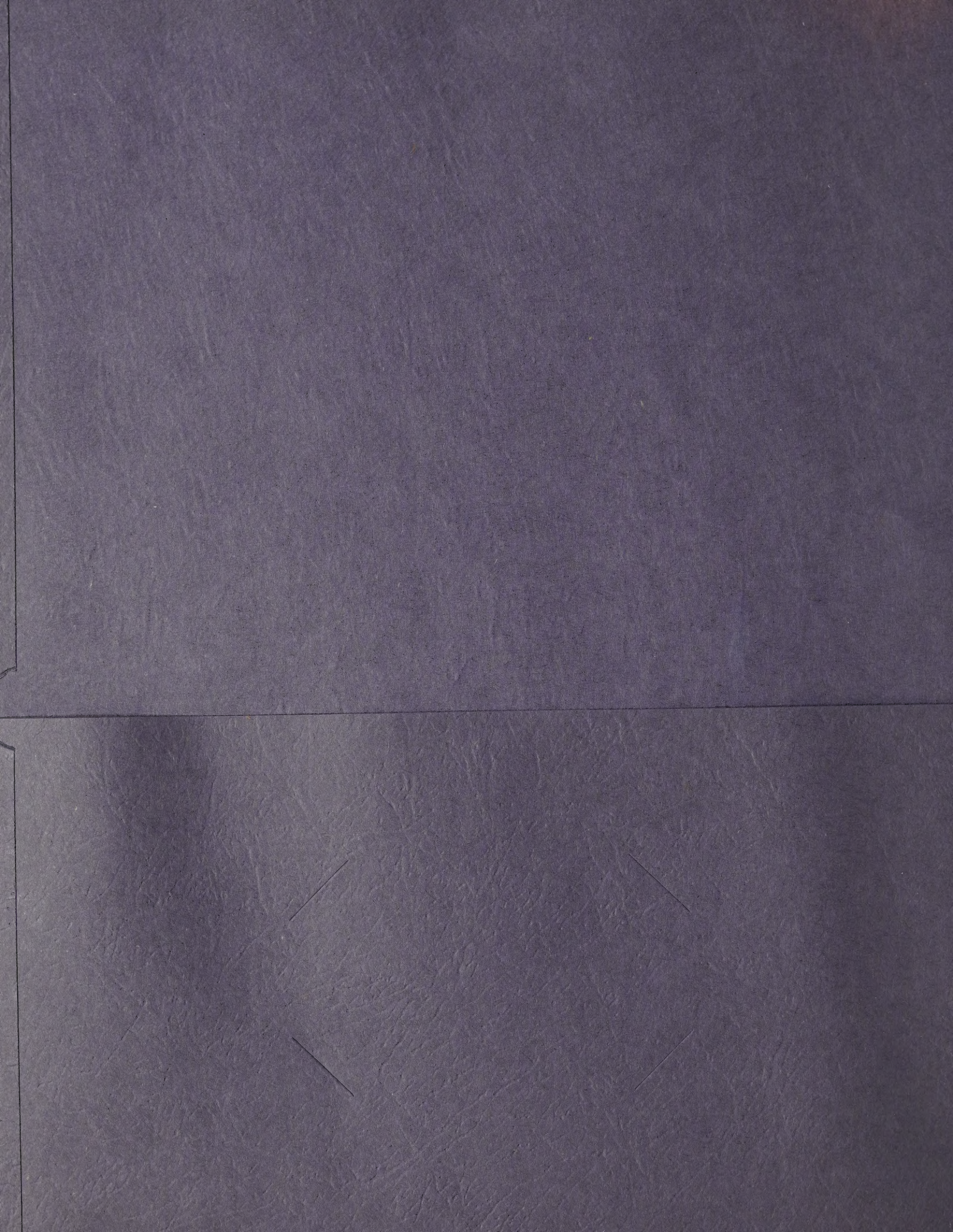

Commission on Election Finances
Commission sur le financement des élections

Ontario

PRESS RELEASE November 26, 1992

(Disponible aussi en français)

Attached is a typed copy of the written judgment of Mr. Justice Borins, in a judicial review of a decision of the Commission on Election Finances sought by Mr. Greg Vezina on behalf of five of the alternative parties registered in Ontario.

The back ground to this judicial review is briefly, as follows.

Mr. Greg Vezina, on behalf of five of the alternative parties, sought permission of the Commission to prosecute the TV networks and the three major parties with regard to an unfair division of time in the leadership debates held in the last general election.

The Commission at its meeting of October 28, 1992 denied such permission because an earlier judgment by Mr. Justice Borins had stated that leadership debates were "network programming" rather than a partisan event, and therefore there was no obligation for the parties to report the broadcast time at fair market value in their financial return, and therefore the Commission on Election Finances did not become involved.

The application for judicial review by Mr. Vezina et al was based primarily on the contention that the Commission was not legally constituted because the Act stipulates that the membership of the Commission "shall be composed of ...", among others, a Bencher of the Law Society of Upper Canada. There has been no replacement of the last Bencher who resigned following the 1990 general election, and since the Commission has recommended that the Bencher Membership should be eliminated, primarily because their record of attendance has not been good, the Government has not moved to fill the position while amendments to the Election Finances Legislation is under review by an Ad Hoc Committee representative of the parties in the Legislature.

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Since the deadline for any prosecution which Mr. Vezina and his associates wishes to make would run out on November 25, 1992, this application for judicial review was dealt with Thursday, November 19, 1992 and Mr. Justice Borins rendered his written judgment the following day.

- 30 -

Donald C. MacDonald
Chair

Attach.

DECISION

OF

JUSTICE BORINS

BETWEEN:

Gregory Vezina, James Harris, the Green Party of Ontario, the Communist Party of Canada (Ontario), the Ontario Provincial Confederation of Regions Party, the Freedom Party of Ontario, and the Ontario Libertarian Party

Applicants

and

Commission on Election Finances and Donald C. MacDonald

Respondents

(typed from Justice Borin's handwritten decision)

November 19, 1992

Because I am satisfied that the delay required for an application to the Divisional Court is likely to involve a failure of justice in light of the apparent requirement to institute a prosecution by November 25, 1992, leave is granted pursuant to section 6(2) of the **Judicial Review Procedure Act** to bring this application to the General Division.

It is submitted by the applicants that the Commission on Election Finances was not lawfully constituted when it made the decision under review in which it refused the request made by the applicants to give its consent to institute the prosecution under the **Election Finances Act** which formed the subject of the request. The applicants submit that the Commission was not lawfully constituted because one of the Members of the Commission - a bencher of the Law Society of Upper Canada - had not been appointed by Cabinet.

In my view, the provision of section 2(2) of the Act that the Commission "shall be composed of" the 9 persons stipulated by it does not mean that the Commission was not lawfully constituted at the time the decision was made in the absence of the appointment of the bencher. In my opinion, the Commission was constituted in substantial compliance with section 2(2) and, there being no evidence that the decision was made without the quorum required by section 2(6) I am not satisfied that it was not constituted as required by section 2(2) at the relevant time.

Because it relates to the composition of the Commission, I would add that the applicants have failed to establish the allegation that the Commission was biased when it made its decision.

Whether viewed as a refusal by the Commission to consent to a prosecution being instituted under the Act or as the exercise by the Commission of a prosecutorial discretion, in my view the same result follows. The Legislature has given to the Commission under section 53 the discretion to consent to prosecutions being instituted under the Act in the context of the powers and duties granted to it under section 4(1). As such the Commission, which is independent of the Legislature, exercises powers similar to those of a provincial Attorney General. It is my view, therefore, that the decision of the Commission not to consent to the institution of the prosecution requested by the applicants is not reviewable by the Courts: e.g., Re Warren and the Queen, (1981) 61 c.c.c.(2d) 65.

In any event, even if I am incorrect in this approach and on the assumption that the Commission exercised its discretion on incorrect principles and considerations requiring the Court to quash its decision, the remedy of an order of mandamus requiring that the Court order that the Commission consent to the prosecution is not available in the circumstances of this application. In this regard, I accept as correct and adopt the submissions contained in paragraphs 23-28 of the factum of the respondents' Counsel.

. . . 2

Finally, I am satisfied that the reasons of the Commission on which it based its decision to refuse its consent to the prosecution were correct. On the basis of the materials before me the Commission reached the correct decision that there was no apparent contravention of the Act in respect to the broadcasting of the leadership debates. In reaching this conclusion, I agree with the submissions in paragraphs 29-37 of the responding Counsel's factum.

Accordingly, the application is dismissed.

In my view, this is an appropriate case in which to award costs to the successful respondents. I base this conclusion on a number of factors in addition to the usual principle that costs should follow event. There were, in my perception of the application, no truly novel issues, it being clear that it is well established that the Courts do not, as a general rule, order that a tribunal or board perform an act which is within its discretion to carry out. As well, I am troubled by allegations of bias which were totally absent on the evidence. There is considerable merit in Mr. Penny's submission, to which Mr. Ruby did not respond, that this application appears to have been made by the applicants in the furtherance of their own political agendas and that there were, perhaps, more appropriate remedies available to them to achieve the interpretation which they were seeking of certain provisions of the Act than this application.

In the circumstances, therefore, the respondents are entitled to costs fixed at $2,500.00 payable forthwith.

Justice Borins